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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,480	07/21/2003	Jean-Christophe Simon	032487-005	4520
7590 06/04/2009 BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404				
EXAMINER YU, GINA C				
ART UNIT 1611		PAPER NUMBER		
MAIL DATE 06/04/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/622,480

Applicant(s)

SIMON ET AL.

Examiner

GINA C. YU

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6-9, 16, 17, 19, 22-25, 27-32, 34-48, 56-63, 68-74 and 78-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6-9, 16, 17, 19, 22-25, 27-32, 34-48, 56-63, 68-74, 78-90 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 02/28/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on January 28, 2009 has been entered.

Allowable Subject Matter

The indicated allowability of claims 1, 6-9, 16,17,19,22-25,27-32,34-48,56-63, 68-74,78-90 is withdrawn in view of the newly discovered reference(s) to US 6325847 B1. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 6-9, 16, 17, 19, 22-24, 27, 28, 30, 34-48, 56-63, 68-72, 78-83, 85-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oko et al. (WO 01/51015) in view of Christie et al. (US 6325847 B1).

Oko teaches cosmetic make-up products comprising two different types of interference pigments, which create shadow effects which creates more depth and dimensional appearances at various angles of viewing See p. 3, line16 – col. 5, line

22. The reference teaches that its lip products, for example, create plump appearance on the lip surface, See p. 5, bridging par. The reference teaches adding about 1-20 % of shadow interference pigment, about 1-20 % of traditional interference pigment, and less than about 5 % of traditional pigments in a standard wax lipstick base. See example 1, illustrating a lipstick composition containing castor oil, caprylic/capric triglyceride, and polydecene, which meet the refractive index limitation as defined by applicants' disclosure, and iron oxide, which meets instant claims 40, 41. See claims 16, 17, 27, 28, 33-39, 43, 45. Applying the invention to make a foundation, gloss, bronzer is taught. See p. 5, lines 16 – 23. See instant claims 43-45, 47.

While Oka teaches micas layered with about 50-500 nm films of TiO_2 , Fe_2O_3 , or Cr_2O_3 , or combinations thereof, further coated or uncoated with silica, the reference does not specifically mention the interference pigments having the structure of instant claims.

Christie teaches lustrous, silver-coated glass flakes having 100 micron average major dimension. See Example 2; instant claim 1 b), 22, 23, 24, 29. Example 3 teaches 100 micron glass flakes coated with titanium dioxide capable of generating optical interference. See instant claims 6-9, 22, 23, 24, 29. The reference teaches the multilayered reflective pigments are useful for decorative cosmetic preparations. See col. 5, line 2. The benefits of this prior art include improved structural integrity and cost effectiveness, and stability over traditional pearlescent pigments. See col. 2, lines 26 – 68.

It is obvious that one of ordinary skill in the art would have been motivated to modify the teachings of Oko by substituting the traditional interference pigments with the reflective pigments of Christie, because 1) both references are directed to cosmetic composition which utilizes a combination of interference and reflective pigments; and 2) Christie teaches the prior art reflective metal pigments are more stable and cost effective over the traditional pearlescent pigments. Since Christie teaches using the reflective metal pigments to make cosmetic products, the skilled artisan would have had a reasonable expectation of successfully producing stable cosmetic compositions with shadow effects with desired end colors.

Claims 31, 32, 73, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oko and Christie as applied to claims 1, 6-9, 16, 17, 19, 22-24, 27, 28, 30, 34-48, 56-63, 68-72, 78-83, 85-90 as above, and further in view of Simon (FR 2777178).

While Oko and Christie teach multiple-layered interference pigments, the references do not specifically mention the goniochromatic pigments having the structure of instant claims.

Simon teaches cosmetic compositions comprising goniochromatic coloring agents in admixture with up to 20 % of nacreous pigments. See English equivalent, US 6451294 B1, col. 5, lines 41-65. As for the goniochromatic coloring agents, the reference teaches multilayer structured colorants, such as $\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3$. The reference teaches the goniochromatic pigments produce different colors depending on the light incidence and viewing angle. The user

of the prior art applies a first layer of a first composition comprising a cosmetically acceptable medium and at least one first colorant and then applying to part of the said first layer a second layer of a second composition comprising a cosmetically acceptable medium and at least one second colorant, one of the first and second colorants being a goniochromatic colorant able to produce different colors depending on the light incidence and the viewing angle and the other colorant being a monochromatic colorant which produces one of the colors of the goniochromatic colorant. The reference teaches using the interference pigments in making lip products, nail varnish, foundation, and mascara. See col. 8, lines 49-67.

It would have been obvious to one of ordinary skill in the art to modify the teachings of Oko and Christie by incorporating the goniochromatic coloring agents with multilayer structured colorants, such as $\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3$, as motivated by Simon, because 1) both references are directed to cosmetic composition which utilizes a combination of interference and reflective pigments; and 2) Simon teaches its goniochromatic pigments produce different colors depending on the light incidence and viewing angle. The skilled artisan would have had a reasonable expectation of successfully producing cosmetic makeup products with special visual effects.

Claims 42 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oko and Christie as applied to claims 1, 6-9, 16, 17, 19, 22-24, 27, 28, 30, 34-48, 56-63, 68-72, 78-83, 85-90 as above, and further in view of Blin et al. (FR 2816830).

The combined references fail to teach the fibers of instant claims.

Blin et al. teach using flat fibers in cosmetic composition with continuous lipophilic phase. See English equivalents, US 2004/0076649 A1, [0008-0012]. The reference teaches that the cosmetic compositions include lip products which are colored, or top coat products, to modify keratinous materials which already have make up compositions applied. The reference teaches that the incorporation of flat fibers into the composition can be done very easily, without losing the cosmetic properties of the composition, while forming a deposit exhibiting a velvety feel to the touch due to the homogeneous dispersion of the flat fibers in the composition. The deposit of the composition provides good feel and mechanical resistance, a bright visual effect when formulated in a translucent carrier. The suitable oil carrier includes cyclic silicone oils and hydrocarbon oils such as paraffin oils. See [0066]. The reference also teaches adding to the top composition preferably 0.02-20 % by weight of additional pigments selected from pearlescent agents, such as mica coated with titanium oxide or iron oxide. See [00127]. See instant claims 1, 6-9 16, 17, 40, 41.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of the combined references by incorporating the flat fibers of Blin, as motivated by the latter reference, because all of the references teaches the application of the respective inventions in cosmetics, and Blin teaches the advantages of incorporating the flat fibers in oil-based cosmetic compositions, which include bright visual effect, good feel and mechanical resistance. The skilled artisan would have had a reasonable expectation of successfully producing a stable cosmetic product comprising flat fibers with enhanced shine and feel.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1611